

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FREEPLAY MUSIC, LLC,

Plaintiff,

v.

GIBSON BRANDS, INC. (f/k/a GIBSON GUITAR
CORP.)

Defendant.

Civil Action No. _____

**COMPLAINT AND
JURY DEMAND**

Plaintiff Freeplay Music, LLC (“FPM”), through its undersigned attorneys, Baker Hostetler, LLP, complains of defendant Gibson Brands, Inc. (f/k/a Gibson Guitar Corp.) (“Gibson”):

Nature of the Action

1. By this complaint, FPM—a music publisher that has invested and risked money, time, and energy to develop its catalogue of copyrights—seeks redress for Gibson’s copyright infringement. Gibson exploited, without authorization, five of FPM’s copyrighted sound recordings and compositions by incorporating them into videos, posted on 49 websites, for its own products. Despite being on notice of its infringement, Gibson has refused to remedy its wrongdoing, leaving FPM no alternative but to bring this action.

Parties

2. FPM is a Delaware limited liability company, with a principle place of business in New York, New York.

3. Gibson is a Delaware corporation with a registered address at c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 and principle place of business in Nashville, Tennessee.

Jurisdiction and Venue

4. FPM's claims arise under the Copyright Act, 17 U.S.C. §§ 101 *et seq.* Subject matter jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338.

5. Venue in this District is proper under 28 U.S.C. § 1391.

6. The Court has personal jurisdiction over Gibson because, upon information and belief, it derives substantial revenue from interstate commerce, conducts business over the Internet, and has performed acts causing harm to FPM, including infringing copyrights belonging to FPM, a New York copyright holder, which give rise to this action.

FPM and Its Business

7. In 2001, Scott Schreer, one of America's most prolific and performed TV composers and producers, launched FPM, a high quality online music library. Schreer, whose credits include, among many others, the *NFL on Fox* theme, is also a contributing composer to a portion of FPM's catalogue.

8. FPM makes its catalogue available on its website. To download music a user must obtain a license that corresponds to the user's use (i.e., personal, commercial, etc.). The cost of such license varies depending on use.

9. With over 200,000,000 impressions to its website as of 2013, FPM is one of the most widely trafficked production music libraries in the industry. Since August 2013, FPM has issued over 3 million licenses to the copyrighted music in its library.

10. All use of FPM's music requires a license.

11. When a user logs on to FPM's website, <http://www.freeplaymusic.com/>, the user is presented with a variety of choices and thousands of musical works (i.e., sound recordings and the underlying musical compositions), all of which are available for certain types of exploitation. Once the user chooses the desired musical work and selects "Add to Cart," the user is prompted to choose a license type:

Duration	License Type	License Fee	Terms
06:16	Select Select YouTube Business Use- Youtube (unlimited URLs)(1 Year(s), \$250.00) Personal use on YouTube only(99 Year(s), \$0.00) Business Multimedia Unlimited (non-broadcast) [worldwide](1 Year(s), \$250.00) Music on Hold [single track](1 Year(s), \$25.00) Web Page Use(1 Year(s), \$100.00) Multimedia one use (non-broadcast) [worldwide](1 Day(s), \$50.00) Game/App Use(1 Year(s), \$150.00) Education In-Classroom Use(99 Year(s), \$0.00) Film Commercial Film Festival [track](7 Day(s), \$50.00) Commercial Unlimited Film Festivals [per track](1 Year(s), \$150.00) Student Film Festival (non commercial)(1 Year(s), \$0.99) Professional Use (per track)(1 Year(s), \$500.00) Indie trailer (theatrical and web) [US Only](1 Year(s), \$250.00) Internet Personal use (Social Media)- non promotional(99 Year(s), \$0.99)		<u>Terms of Use</u> <div>Add more Tracks</div> <div>Proceed to checkout</div>

12. The user cannot "Proceed to Checkout" without choosing a license type.

13. Once the user chooses a license and decides to "Proceed to Checkout," a window pops up displaying the "FPM License," requiring the user to enter an email address confirming that he or she has read the terms of the license. A copy of the license is then e-mailed to the confirmation address entered by the user.

14. Until July 2013, any exploitation of FPM's music "posted on a website" required a paid license. After July 2013, a user could obtain a free license to use certain music in FPM's catalogue on YouTube, provided it was for "personal use" only. Any "business use" of FPM's music requires a paid license.

Gibson

15. Upon information and belief, Gibson makes and distributes guitars around the world, including in the Southern District of New York, and markets its guitars in various ways, including through audio-visual works.

16. Upon information and belief, Gibson published some of these audio-visual works on different Internet sites, including, but not limited to, the Internet site hosted by YouTube. Gibson.com, Gibson's website, links a viewer directly to YouTube to view these audio visual works.

The FPM Copyrights at Issue and Gibson's Unauthorized Exploitation

FPM's Copyrights

17. FPM is the owner of the registered copyrights (the "FPM Copyrights") in and to the musical compositions and sound recordings (the "FPM Copyrighted Music") set forth below:

- a. "Bouncing," covered by Registration No. SR 333-651 covering the collection *Alternative Rock Volume 1*.
- b. "Relentless," covered by Registration No. SR 337-058 covering the collection *Sports Highlights Volume 1*.
- c. "Ride On Road Rats," covered by Registration No. SR 374-911 covering the collection *Freeplay Music Corp. DVD #4*.
- d. "Rough Rouge," covered by Registration No. SR 337-144 covering the collection *Hard Rock Volume 1*.

- e. “Up The Downbeat,” covered by Registration No. SR 337-057 covering the collection *Country Volume 1*.

Gibson’s Unlicensed Use of FPM’s Music Copyrights

18. Since June 21, 2010, Gibson has engaged in at least 49 uses of the FPM Copyrights, including:

- a. FPM’s copyrighted musical work “Bouncing” is exploited on the following website:
<http://www.youtube.com/watch?v=xH-K0Bsr9aw>.
- b. FPM’s copyrighted musical work “Relentless” is exploited on the following websites:
<http://www.youtube.com/watch?v=dAQcYrzVY2A>,
<http://www.youtube.com/watch?v=Zg1eIY3lxSc>,
http://www.youtube.com/watch?v=S7k_iXUzJuc,
<http://www.youtube.com/watch?v=AZKGTmCE5fM>,
<http://www.youtube.com/watch?v=sKd1tXJKo7c>,
<http://www.youtube.com/watch?v=ww7Zs9naEtM>,
http://www.youtube.com/watch?v=pc_dvi0Xldo,
http://www.youtube.com/watch?v=_TSB4-vkb3A, and
<http://www.youtube.com/watch?v=qXsIbW9H8lg>.
- c. FPM’s copyrighted musical work “Ride On Rats” is exploited on the following websites: <http://www.youtube.com/watch?v=cBRlfInRQck>,
<http://www.youtube.com/watch?v=PKmOoN3OG-s>,
http://www.youtube.com/watch?v=_9yjszcf4_Q,
<http://www.youtube.com/watch?v=5c52ufnbDO0>,
<http://www.youtube.com/watch?v=5c52ufnbDO0>,
<http://www.youtube.com/watch?v=4RCfdlQNk3c>,
<http://www.youtube.com/watch?v=87KlWI8TsQw>,
<http://www.youtube.com/watch?v=gekWUGWlvus>,
http://www.youtube.com/watch?v=LvckADf_21s,
<http://www.youtube.com/watch?v=vH5q7xQjEoM>,
<http://www.youtube.com/watch?v=i6SuGoptzgL>,
<http://www.youtube.com/watch?v=qa0AKr6K9bA>,
<http://www.youtube.com/watch?v=gz3Bjv9gkRc>,
<http://www.youtube.com/watch?v=BeDMHwevJi0>,
<http://www.youtube.com/watch?v=ZeHMaURyoEI>,
<http://www.youtube.com/watch?v=AyJsjaau2E>,
<http://www.youtube.com/watch?v=kIcGsvPgdf4>,
<http://www.youtube.com/watch?v=TUfja1jARo0>,
<http://www.youtube.com/watch?v=T1hxTtjas3w>,
<http://www.youtube.com/watch?v=HY4d7o86rGc>,
<http://www.youtube.com/watch?v=oQAklIguv3A>,
<http://www.youtube.com/watch?v=sdEZkxrJZ4w>,
<http://www.youtube.com/watch?v=52LTRQgHTgE>,

<http://www.youtube.com/watch?v=eTRZ0OM6fKg>,
<http://www.youtube.com/watch?v=tAojCFqElbQ>,
<http://www.youtube.com/watch?v=N5Jtq8Wj3P8>,
<http://www.youtube.com/watch?v=cK65CH6KvnI>,
<http://www.youtube.com/watch?v=rJvXc4A-h2U>,
<http://www.youtube.com/watch?v=zh5NeKh3AQs>,
<http://www.youtube.com/watch?v=mxno4BZ-6hQ>,
<http://www.youtube.com/watch?v=7bhBkUryGYY>,
<http://www.youtube.com/watch?v=WH95AHkyUXw>,
http://www.youtube.com/watch?v=t6O_VnhsJyw,
<http://www.youtube.com/watch?v=SryUsKeh-3c>,
<http://www.youtube.com/watch?v=L0LGKaVKnVo>,
<http://www.youtube.com/watch?v=GFoktgML6zE>,
<http://www.youtube.com/watch?v=LYFM7J6ctM0>, and
<http://www.youtube.com/watch?v=YtJ2qlXi59M>.

- d. FPM's copyrighted musical work "Rough Rouge" is exploited on the following website: <http://www.youtube.com/watch?v=x21fptcdzVQ>.
- e. FPM's copyrighted musical work "Up The Downbeat" is exploited on the following website: http://www.youtube.com/watch?v=_HCYyOaYQlg.

19. Upon information and belief, Gibson posted, or caused to be posted, the videos identified in paragraph 18.

20. Gibson did not receive a license to exploit FPM's Copyrighted Music in the manner set forth in paragraph 18.

21. Upon information and belief, Gibson copied and publicly performed FPM's Copyrighted Music through digital transmissions on the websites set forth in paragraph 18.

22. Upon information and belief, at all relevant times, Gibson maintained editorial control for content performed and/or copied on the websites set forth in paragraph 18.

23. In July 2015, FPM's agent, TuneSat, LLC ("TuneSat") contacted Gibson regarding Gibson's use of FPM Copyrighted Music. TuneSat corresponded with, upon information and belief, legal counsel for Gibson from July 2015 to October 2015. Continuing that

correspondence TuneSat sent a letter to Gibson on October 8, 2015. TuneSat received no response to its letter.

Count I:
Copyright Infringement

24. FPM incorporates the allegations set forth in paragraphs 1 through 23 hereof, inclusive, as though the same were set forth herein.

25. This cause of action arises under 17 U.S.C. § 501.

26. Each of the FPM Copyrights has been registered with the United States Copyright Office.

27. FPM owns all exclusive rights under 17 U.S.C. § 106 to the FPM Copyrighted Music.

28. Each of the musical works covered by the FPM Copyrights is an original work and constitutes copyrightable subject matter within the meaning of 17 U.S.C. § 102.

29. FPM has never granted Gibson or otherwise authorized Gibson to exploit the musical works covered by the FPM Copyrights.

30. Gibson's acts violate FPM's exclusive rights under 17 U.S.C. § 106.

31. Gibson's infringement of the FPM Copyrights is and has been willful, intentional, purposeful, and/or in disregard of FPM's rights.

32. FPM is entitled to its damages and Gibson's profits from the alleged infringement, in an amount to be proven at trial.

33. In the alternative, FPM is entitled to statutory damages, in an amount of up to \$150,000 per infringed copyright.

PRAYER FOR RELIEF

WHEREFORE, FPM respectfully prays for judgment against Gibson as follows:

- (a) for a ruling that Gibson has willfully infringed FPM's copyrights;
- (b) for injunctive relief prohibiting Gibson from exploiting the FPM Copyrighted Music;
- (c) for FPM's damages and, to the extent not duplicative, Gibson's profits attributable to the infringement;
- (d) in the alternative to actual damages, for statutory damages under 17 U.S.C. § 504(c), in an amount of up to \$150,000 per work;
- (e) for FPM's costs of this action, including reasonable attorneys' fees under 17 U.S.C. § 505;
- (f) for prejudgment and post judgment interest; and
- (g) for such other and further relief as the Court deems proper and just.

DEMAND FOR JURY TRIAL

FPM requests a trial by jury on all issues so triable.

Respectfully submitted,

BAKER & HOSTETLER LLP

Dated: February 25, 2016
New York, New York

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